

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 984 of 1981

with

FIRST APPEAL No 59 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

and

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAVI BUILDERS

Versus

MINOR MRUGESH JASHWANTBHAI

Appearance:

1. First Appeal No. 984 of 1981

MRS KETTY A MEHTA for the appellant.

MR GN MANSURI for Respondent Nos 1 to 3

MR SN SHELAT for Respondent No. 4

NOTICE SERVED for Respondent No. 5

2. First AppealNo 59 of 1983

MR SN SHELAT for the appellant.

DELETED Respondent Nos. 1 to 3.

MR ARUN H MEHTA for Respondent No. 4

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/11/2000

COMMON JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

#. These two First Appeals have been filed against the common judgment and decree dated 15.06.1981 passed by the Judge, City Civil Court, (Court No.XI), Ahmedabad City in Civil Suit No. 518 of 1976 whereby the suit was partly decreed against the defendant nos. 1 and 2 i.e. the Municipal Corporation of the City of Ahmedabad and M/s. Ravi Builders i.e. defendant no.2. The defendants nos. 1 and 2 were directed to pay a sum of Rs.1,00,000/-to the plaintiffs with interest at the rate of 6% p.a. from the date of the suit till realisation of the amount along with proportionate costs of the suit. So far as defendant no.3 i.e. New India Insurance Company Limited is concerned, the suit was dismissed.

#. Against the said judgment and decree dated 15.06.1981, the First Appeal No. 984 of 1981 has been preferred by the concerned contractor viz. M/s. Ravi Builders and the another First Appeal i.e. First Appeal No. 59 of 1983 has been preferred by the Municipal Corporation of the City of Ahmedabad. Thus, both these appeals are defendant's appeals against common judgment and decree and we propose to decide both these appeals by this common judgment and order as under.

#. The plaintiff had filed the suit on the basis that it is the duty of the Municipal Corporation of the City of Ahmedabad to construct and maintain roads and drainage. The work of laying big pipelines on the road from Chamanpura Railway Crossing towards Chamunda was commenced in September,1974 by the defendants. For the purpose of this construction work deep trenches were dug for laying drainage pipes on the said road and these trenches had remained open for a long period. The defendant no.1 i.e. Ahmedabad Municipal Corporation had entrusted this work to the defendant no.2 viz. Ravi Builders. It is alleged that the deceased Jashwantbhai

Kalidas, (father of plaintiff nos. 2, 3 and 4 and minor Yogita and husband of plaintiff Manjulaben) was working as a Clerk in the Ahmedabad Division of the Gujarat State Road Transport Corporation. His duty hours were being changed from time to time. On 08.11.1974 Jashwantbhai Kalidas had his duty hours from 4.00 a.m. to 12.30 p.m. and on that day i.e. on 08.11.1974 when Jashwantbhai Kalidas came near Chamunda Railway Crossing from Chamanpura Road, near Gujarat Pharmaceuticals at about 3.30 a.m. to 3.45 a.m. on his bicycle fell in the trench which was dug by the defendants for drainage and became unconscious. Jashwantbhai Kalidas was healthy and physically fit and during the past two years he had never fallen sick. He fell in the trenches which was dug by the defendants for drainage and became unconscious. During the period 6.00 a.m. to 6.30 a.m. the persons who were on road for morning shift had seen Jashwantbhai Kalidas in the said drainage trench lying unconscious. Thereafter, he was shifted to the Civil Hospital for treatment where he died on the same day i.e. 08.11.1974 at 12.00 noon.

#. In para 5 of the plaint it was stated that the defendants had not displayed any board of warning or a red light at the place of these trenches. These defendants had also not covered these trenches by fencing and had not kept any watchman. The street light near the said trench was not working on that day. No warning indicating that drainage trenches were being dug on the said road, and no proper arrangements were made in this regard. Since, the defendants had dug deep and broad trenches in the middle of the road and no precautions were taken by these defendants to prevent any mishap, Jashwantbhai Kalidas had fallen in the trench and died due to the negligence on the part of the defendants. That, deceased was a permanent employee of the Gujarat State Road Transport Corporation and at the time of his death he was drawing his salary of Rs.446/- per month. He was also entitled to gratuity at the time of his retirement. One month's leave salary was given every year as bonus. Age of the deceased was 32 years at the time of his death and was physically fit and would have lived longer and would have continued in service for 26 years till attaining the age of superannuation i.e. 58 years. It was also the case that he was entitled to increment every year and would have been promoted to a higher post in future because he had also passed the I.T.I.Examination. It was contended that during the next fifteen years the deceased would have earned a sum of Rs.2,00,000/-. It was further contended that the deceased had suffered due to this accident because of the

negligence of these defendants and had undergone pain which cannot be compensated in terms of money. However, for the purpose of this suit an amount of Rs.10,000/- has been assessed for pain and suffering. The defendant corporation filed the written statement at Exh.15 and further written statement Ex.124. The defendant No.2 Ravi Builders filed written statement at Exh.28 and the defendant No.3 filed his written statement at Ex.49 so as to contest the suit. On the basis of the pleadings of the parties, the following issues were struck.

1. Whether the deceased Jashwantbhai In the Kalidas had the fall in the Affirmative.
drainage pit dug by defendant
No.2 for defendant No.1?
2. Whether Jashwantbhai Kalidas In the died on 8th November,1974 in Affirmative.
the Civil Hospital on account
of the fall stated above?
3. Whether the death of Jashwantbhai In the Kalidas was on account of negli- Affirmative.
gence and carelessness on the part
of defendants Nos. 1 and 2 as
alleged in Para - 5 of the plaint?
4. Whether the deceased was earning In the Rs.446 per month as the permanent Affirmative.
employee of Gujarat State Road
Transport Corporation?
5. Whether the suit is not Yes, the suit
maintainable? is maintainable.
6. Whether the suit is barred In the negative.
by limitation within the meaning
of Section 487(1)(B) of the
BPMC Act?
7. Whether the Suit is bad for In the negative.
misjoinder of parties as alleged
by defendant No.3?
8. Whether the policy of insurance Not proved.
issued by defendant No.3 to the
defendant No.2 covers the third
party risk or not?
9. Whether this Court has no This Court has
jurisdiction to entertain and jurisdiction to

try this Suit as alleged by entertain the defendant No.3?

10. To what relief, if any, Rs. One lac from the plaintiff is entitled to? defendants Nos. 1 and 2 for the benefit of the minor plaintiff and other dependents of the deceased.
11. What order and decree ? As per the final order and decree?

The first four issues were decided in affirmative in favour of plaintiffs. With regard to issue no.5, the suit was found to be maintainable. Issue nos. 6 and 7 about limitation and misjoinder respectively were negatived. Issue no.8 about insurance policy was not found to be proved. Issue No.9 on the question of jurisdiction was decided in favour of the plaintiffs and the Court held that it had the jurisdiction to entertain the suit and it was partly decreed against the defendant nos. 1 and 2 for a sum of Rs.1,00,000/-. As a result of findings on these issues a sum of Rs.1,00,000/- was to be paid by the defendant nos. 1 and 2 for the benefit of the minor plaintiffs and other dependents of the deceased and the suit was partly decreed for a sum of Rs.1,00,000/- to be paid by the defendant nos. 1 and 2 to the plaintiffs with interest at the rate of 6% p.a.

#. Aggrieved from this judgment and decree dated 15.06.1981, the present appellants have challenged the judgment and decree dated 15.06.1981 We have heard learned Counsel for the appellants and Mr.G.A.Mansuri for respondent nos.1 to 3 and have gone through the impugned judgment and decree and the available record. We find that the issues have been correctly decided by the Trial Court, the suit was rightly held to be maintainable, the question of limitation for which issue no.6 was struck and the question of misjoinder of the parties i.e. issue no.7 has been correctly negatived. The plaintiffs failed to prove the issue no.8 and it was also rightly held on issue no.9 that the Court had jurisdiction to entertain the suit. It has been rightly held to be proved on the basis of the available evidence that Jashwantbhai Kalidas had fallen in the drainage pit dug by defendant no.2, that Shri Jashwantbhai Kalidas had died on 08.11.1974 in

the Civil Hospital on account of his falling in the trench. The plaintiffs had examined Kalidas Madhavdas, father of the deceased at exhibit 73, Manjulaben Jashwantbhai, widow of the deceased at exhibit 75, Karsanbhai Dhanjibhai who had taken out Jashwantbhai Kalidas from the trench at exhibit 76, Vishnubhai Bhogilal Raval, a Senior Assistant of Gujarat State Road Transport Corporation, Ahmedabad at exhibit 77, Ranchhodbhai Mafatlal Patel, an employee in the Accounts Branch of the Gujarat State Road Transport Corporation at exhibit 81, Dr.Hasmukh R.Patel, Medical Officer of the Civil Hospital at Ahmedabad at exhibit 83, Dr.Indravadan Chandulal Shah who had first treated the deceased at exhibit 91 and Malabhai Punjabhai who had helped in taking out Jashwantbhai Kalidas from the trench at exhibit 93. The defendant no.1 had examined its Deputy City Engineer Bhupendra B.Gajjar at exhibit 97 and the defendant no.2 had examined its partner Rashmikant Manilal Dektawala at exhibit 108. The defendants had also examined one Vastupal Motilal Shah, a Civil Engineer who was a partner in the firm which had taken the sub-contract from the defendant no.2 at exhibit 111. Besides the evidence as above the Trial Court also took into consideration the documentary evidence which was made available on record. In clause 8 of the agreement between the corporation and the contractor it was provided that the work shall be carried out under the supervision of the officer and to his satisfaction and if the officer of the Corporation disapproves the work the payment shall not be made for such work. The Deputy City Engineer Bhupendra Gajjar had deposed at exhibit 97 in his cross-examination that this place of work was being supervised by the Supervisor of the Corporation. He had also stated that one J.A.Shah was the Supervisor in charge of this area and normally a Section Officer had to visit the work every alternate day. He had also stated that J.A.Shah was still in service of the Municipal Corporation and that the Section Officer had submitted his report in the afternoon and that the Section Officer had to submit his report in the afternoon every day after visiting the place to the Deputy City Engineer and Deputy City Engineer also visits the site once or twice a month and supervises the work and gives instructions. The work was thus carried out under the supervision and direction of the officer of the Municipal Corporation. This witness has also stated that surprise checking is also required to be done to ascertain whether the contractor has taken proper safety measures and that he used to visit the place of work. Although he does not remember the date on which he had visited the place. We noticed that the defendant no.1 Corporation did not care to

examine J.A.Shah or any Section Officer who used to visit the place of work on every alternate day and the work was being carried out by defendant no.2 under the direction and supervision as also under the control of the Municipal Corporation. On the basis of these facts, the Trial Court has rightly held that the defendant no.2 could not be taken as an independent contractor. He was working as an Agent of the Municipal Corporation and therefore, neither the defendant no.2 nor the Corporation could be absolved for the negligence or carelessness in the matter of carrying out the aforesaid work.

#. The work was being done on the road itself and it was the duty of the parties carrying out and supervising work to ensure and take caution as to no person may fall in the trenches during day hours or during darkness. It was for them to provide for proper fencing at the place of work to prevent any passer by or cyclist from falling in the drain. It was also their duty to keep constant vigil at the place of work by employing proper watchman and displaying signals of danger by keeping red flags during night time and the school time. No such cautions were taken and reference in this regard may be made to the deposition of the widow of the deceased. The Trial Court has dealt with all these aspects in detail relating to issue nos. 1 to 3 in paragraphs 13 to 22 of the judgment and we find that the findings as have been arrived at by the Trial Court on these three issues i.e. issue nos. 1, 2 and 3 are based on evidence and have been correctly arrived at. The issue no.4 was with regard to the earning of the deceased as to whether he was earning Rs.446/- as a permanent employee of the Gujarat State Road Transport Corporation or not and the same has been found to be proved on the basis of the salary sheet of Jashwantbhai Kalidas at exhibit 82 showing the total emoluments of deceased on 01.10.1974 as Rs.446.12 ps. There was ample evidence on record to show that total emoluments of the deceased at the time of his death were Rs.446/- and even during the cross-examination of Manjulaben this aspect was not subjected to any challenge. Thus, we find that issue no.4 has also been correctly decided. It has to be agreed on all hands that the monthly emoluments of the deceased would not have remained static at Rs.446/- p.m. and the same would have certainly increased by yearly increment or the revision of payscale in the Gujarat State Road Transport Corporation, and more particularly, in view of the fact that the deceased was also a student of second year B.Com. in Vivekanand College as has been established and having added to his qualification he could have earned even more. The longevity of Family members has also

come in evidence and keeping the entire material on record the Trial Court has rightly proceeded on the basis that the monthly average income would have been at least Rs.600/- p.m. and after the amount which the deceased would have spent for himself out of the average income of Rs.600/-p.m., a sum of Rs. 500/- would have certainly been available for his dependency benefit. Having regard to the totality of the circumstances on the basis of which the Trial Court has proceeded to assess the damages under section 1A and Section 2 of the Fatal Accidents Act, the conclusion arrived at by it appears to be correct and justified. The Trial Court has rightly applied the multiplier of 15 and taking annual income of the deceased at the rate of Rs.600/- p.a. and accordingly the datum figure of Rs.500/- p.m. i.e. Rs.6,000/- per annum the sum of $Rs.6,000/- \times 15 = Rs.90,000/-$ has been rightly determined under sections 1A and 2 of the Fatal Accident Act. The grant of Rs.5,000/under section 2 for pain and suffering to the deceased is also justified and grant of Rs.5,000/against conventional amount under section 2 is also correct and thus the suit has been correctly decreed for a sum of Rs.1,00,000/-. The trial Court has also correctly tabulated the apportionment of Rs.1,00,000/- and the respective shares of parents, widow, minor Mrugesh, Jayshree, Pankaj and Yogita.

#. We therefore find that the impugned judgment and decree does not suffer from any error or infirmity. The findings are based on evidence and the amount has been correctly determined and the shares have been properly apportioned. It is given out by Mr.Mansuri, learned Advocate appearing for respondent nos. 1 to 3 that the entire decretal amount including the interest has been deposited in the Bank through the Court and each of the claimants has received his respective share as per apportionment given in the judgment. The parties which were minor must have become major by now and it will be open for them to withdraw their respective amount lying in the bank and the bank shall allow them in accordance with rules. We do not find any merit in these two appeals and the same are hereby dismissed with no order as to costs.

Sd/- Sd/-
(M.R.Calla, J) (D.A.Mehta,J)

m.m.bhatt

